

**ASSEMBLY BILL**

**No. 2916**

---

**Introduced by Committee on Water, Parks and Wildlife (Wolk (Chair), Villines (Vice Chair), Bass, Lieu, Matthews, Parra, Runner, and Saldana)**

February 24, 2006

---

An act to add Section 13015 to the Fish and Game Code, relating to fish and wildlife resources, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2916, as introduced, Committee on Water, Parks and Wildlife. Department of Fish and Game: endowment funds.

(1) Existing law establishes the Department of Fish and Game within the Resources Agency, and generally charges the department with the administration and enforcement of the Fish and Game Code. Existing law authorizes the department to enter into various agreements to provide for the mitigation of adverse biological impacts on, and the protection of, fish, wildlife, and plants, and their respective habitats.

Existing law establishes the Special Deposit Fund, which consists of moneys that are paid into it in trust pursuant to law, and is appropriated to fulfill the purposes for which payments into it are made.

Existing law establishes the Fish and Game Mitigation and Protection Endowment Principal Account and the Fish and Game Mitigation and Protection Expendable Funds Account in the Special Deposit Fund. Existing law requires the department to deposit the endowment funds received pursuant to various mitigation and protection agreements, and interest that accrues on that principal, in

the Fish and Game Mitigation and Protection Endowment Principal Account, if the moneys are designated for specified purposes. Existing law requires the department to utilize the interest generated on the endowment funds, upon appropriation, to fund long-term management, enhancement, monitoring, and enforcement activities on habitat lands in a manner consistent with the terms of the underlying agreement supplying the moneys.

This bill would prohibit the department from requiring as a condition of obtaining any permit, banking agreement, clearance, or mitigation approval from the department that the department hold, manage, or administer any mitigation endowment required by the department. The bill would require the department, whenever feasible, to enter into agreements with public entities or nonprofit organizations that are eligible, under standards adopted by the department pursuant to the bill, for the management, administration, investment, and disbursement of mitigation endowment funds, as defined. The bill would also impose audit and reporting requirements on entities entering into agreements with the department.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. It is the intent of the Legislature in the  
2 enactment of this act to clarify existing law and otherwise allow  
3 qualified public entities and nonprofit organizations to hold,  
4 manage, invest, and disburse mitigation endowment funds held  
5 for the purpose of long-term stewardship of preserved and  
6 protected wildlife habitats, endangered species, wetlands,  
7 agricultural lands, and open-space lands in the state.

8 SEC. 2. Section 13015 is added to the Fish and Game Code,  
9 to read:

10 13015. (a) As used in this section, “mitigation endowment  
11 funds” or “endowment funds” includes moneys required by the  
12 department to be placed in a nonwasting endowment to mitigate  
13 the adverse impacts caused by a permitted activity on natural  
14 lands, including, but not limited to, agricultural lands, wildlife  
15 habitat, wetlands, endangered species habitat, and open space

1 areas, and moneys received pursuant to an agreement or permit  
2 described in subdivision (b) of Section 13014 for purposes  
3 described in paragraph (2) of that subdivision.

4 (b) Notwithstanding any other provision of law, the  
5 department shall not require as a condition of obtaining any  
6 permit, banking agreement, clearance, or mitigation approval  
7 from the department that the department hold, manage, or  
8 administer any mitigation endowment required by the  
9 department. Nothing in this section shall be construed to alter the  
10 authority of the department to require mitigation endowments or  
11 any existing mitigation standard for conservation transactions  
12 with endowment funding subject to department approval.

13 (c) The department shall, whenever feasible, enter into  
14 agreements with public entities or nonprofit organizations that  
15 are eligible under standards adopted pursuant to subdivision (c)  
16 for the management, administration, investment, and  
17 disbursement of mitigation endowment funds.

18 (d) The department shall develop and adopt standards of  
19 eligibility and guidelines to ensure that all public entities or  
20 nonprofit organizations that hold and manage endowment funds  
21 satisfy all of the following requirements:

22 (1) The entity or organization has as its primary mission the  
23 protection and preservation of natural lands, including, but not  
24 limited to, agricultural lands, wildlife habitat, wetlands,  
25 endangered species habitat, and open-space areas.

26 (2) The entity or organization has the capacity to effectively  
27 manage those mitigation endowments, and, if the endowment  
28 manager is not the ultimate land manager, the natural lands  
29 manager who receives the proceeds of the endowment is  
30 qualified.

31 (3) The entity or organization has the capacity to achieve over  
32 the life of the agreement higher adjusted rates of return on the  
33 investment of those funds than the department would if it held  
34 the funds in the State Treasury.

35 (4) The entity or organization complies with generally  
36 accepted accounting practices, and expenditure and investing  
37 procedures, including, but not limited to, maintaining accurate  
38 books and records that specify with particularity the costs and  
39 expenses for which reimbursement is being made, accounting for  
40 any pooling of investments using fund accounting, and ensuring

1 that endowments are tied to and accounted for regarding a  
2 specific property or project.

3 (5) (A) The entity or organization uses sound investment  
4 practices, similar to those used for other long-term investments,  
5 endowments, and pension funds, for the investment of those  
6 mitigation endowment funds. The restrictions imposed upon  
7 local agencies set forth in Article 1 (commencing with Section  
8 53600) of Chapter 4 of Part 1 of Division 2 of Title 5 of the  
9 Government Code shall not apply to mitigation endowment  
10 funds.

11 (B) A nonprofit organization adopts policies to guide the  
12 management, monitoring, and performance of endowment funds,  
13 including methods for allocating investments, investment  
14 guidelines, fund administration accounting, auditing, reporting,  
15 and review.

16 (C) A nonprofit organization that elects to hire investment  
17 counsel selects investment managers that demonstrate relevant  
18 experience and compliance with industry standards for prudent  
19 investment.

20 (D) A public entity, in managing the endowment, invests and  
21 reinvests the endowment funds as a prudent investor would in  
22 any kind of property, real or personal, or mixed, that persons of  
23 prudence, discretion, and intelligence acquire for their own  
24 accounts, considering the purposes and terms of any management  
25 and funding agreement or other permit and agreement subject to  
26 the Uniform Prudent Investor Act (Article 2.5 (commencing with  
27 Section 16045) of Chapter 1 of Part 4 of Division 9 of the  
28 Probate Code).

29 (e) A public entity or nonprofit organization that receives  
30 mitigation endowment funds pursuant to subdivision (c) shall  
31 prepare and submit to the department an annual report on the  
32 status and management of the endowment and annual budget and  
33 on the expenditure of those funds, including current fund account  
34 balances, current year expenditures, budgeted-to-actual  
35 expenditures comparison, and original endowment status versus  
36 inflation-adjusted endowment status.

37 (f) All endowment funds subject to this section shall be  
38 audited annually using generally accepted accounting practices  
39 by a qualified, independent accounting firm.

1 (g) All endowment funding agreements pursuant to  
2 subdivision (c) shall contain provisions to address  
3 nonperformance. The department shall be named as the successor  
4 trustee unless the agreement identifies another appropriate  
5 trustee, as determined by the department, or a process for  
6 identifying an appropriate successor.

7 SEC. 3. This act is an urgency statute necessary for the  
8 immediate preservation of the public peace, health, or safety  
9 within the meaning of Article IV of the Constitution and shall go  
10 into immediate effect. The facts constituting the necessity are:

11 In order to quickly improve the management of many pending  
12 land management endowment accounts and substantial dollars  
13 currently administered by the Department of Fish and Game in  
14 low interest bearing accounts that are barely keeping up with  
15 inflation, causing delays in payments to the organizations  
16 responsible for managing endowment properties for the  
17 protection of the fish and wildlife of this state, it is necessary that  
18 this act take effect immediately.